

ESTTA Tracking number: **ESTTA421293**Filing date: **07/22/2011**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following parties request to cancel indicated registration.

**Petitioner Information**

Name	Packers Provision Co. of Puerto Rico, Inc.		
Entity	Corporation	Citizenship	Puerto Rico
Address	PO Box 364588 San Juan, PR 00936 UNITED STATES		

Name	V. Suarez & Co. Inc.		
Entity	Corporation	Citizenship	Puerto Rico
Address	PO Box 364588 San Juan, PR 00936 UNITED STATES		

Attorney information	Carla Garcia O'Neill & Borges 250 Munoz Rivera Ave., Suite 800 San Juan, PR 00918 UNITED STATES tmproceedings@oneillborges.com, travis.wheatley@oneillborges.com Phone:787-764-8181		
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**Registrations Subject to Cancellation**

Registration No	3978571	Registration date	06/14/2011
Registrant	The Smithfield Packing Company, Incorporated 111 Commerce Street Smithfield, VA 23430 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 029. First Use: 2006/10/00 First Use In Commerce: 2006/10/00  
All goods and services in the class are cancelled, namely: hot dogs; hot dogs made primarily from poultry

**Grounds for Cancellation**

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)		
Priority and likelihood of confusion	Trademark Act section 2(d)		
Other	Void ab initio		
Registration No	3978570	Registration date	06/14/2011
Registrant	The Smithfield Packing Company, Incorporated 111 Commerce Street Smithfield, VA 23430		

	UNITED STATES
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## Goods/Services Subject to Cancellation

Class 029. First Use: 2006/10/00 First Use In Commerce: 2006/10/00  
All goods and services in the class are cancelled, namely: hot dogs; hot dogs made primarily from poultry

## Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Void ab initio

## Mark Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Design Mark			
Goods/Services	chicken franks		

Attachments	SHORGOOD3.JPG Cancellation - Smithfield SHORGOOD Final to upload.pdf ( 20 pages )(534379 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address

record by Overnight Courier on this date.

Signature	/Carla Garcia/
Name	Carla Garcia
Date	07/22/2011

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PACKERS PROVISION CO. OF	)	
PUERTO RICO, INC. and	)	
V. SUÁREZ & CO., INC.	)	
	)	
	)	
Petitioners,	)	Cancellation No. _____
	)	Registrations Nos. 3,978,570 and 3,978,571
v.	)	Marks: SHORGOOD and SHORGOOD
	)	Design
THE SMITHFIELD PACKING COMPANY	)	
INCORPORATED	)	
	)	
Respondent	)	
	)	

Honorable Commissioner for Trademarks  
PO Box 1451  
Alexandria, VA 22313-1451

PETITION FOR CANCELLATION

PACKERS PROVISION CO. OF PUERTO RICO, INC., a corporation organized under the laws of Puerto Rico, (“Packers”) and V. SUAREZ & CO., INC., a corporation organized under the laws of Puerto Rico, (“V. Suárez,” and collectively with Packers, “Petitioners”), believe, collectively and individually, that they are or will be damaged by the continued registration of the mark identified above and hereby petition to cancel the registration.

As grounds for this Petition, Petitioners allege, collectively and individually:

1. Packers is engaged in food and beverage distribution.
2. V. Suárez is engaged in the distribution of numerous products, including food and beverages.
3. The Smithfield Packing Company Incorporated (“Respondent”) is a corporation organized under the laws of Delaware.

4. Respondent is a producer and/or packer of numerous food products, including meat products.

5. On or about June 1978, Conagra, Inc. (together with its subsidiaries and affiliates, “Conagra”) began selling chicken franks using a trademark consisting of the design of a stylized chicken head and the wording “SHORGOOD” (the “SHORGOOD Design”), thereby introducing the SHORGOOD brand.

6. Initially, the SHORGOOD brand was owned by ConAgra and Packers distributed the goods within the Puerto Rico territory.

7. Since 1981 at the very least, Packers was creating a market in Puerto Rico for the SHORGOOD brand of chicken franks.

8. In or around 2005, ConAgra informed Packers of ConAgra’s intention to cease manufacturing SHORGOOD brand chicken franks but advised Packers they were free to continue marketing the brand in Puerto Rico.

9. Packers then procured manufacturing of chicken franks from a plant which was owned by Respondent.

10. Beginning in or about 2005, Respondent provided chicken franks to Packers in packaging incorporating the SHORGOOD Design (the “Packers SHORGOOD Franks”).

11. As ConAgra had chosen to abandon the mark, by 2006, ConAgra’s trademark registration 2,310,525 for the SHORGOOD mark was allowed to lapse because ConAgra failed to submit the corresponding Section 8 use declaration.

12. Packers, concerned that the packaging for the Packers SHORGOOD Franks was not accurate, on November 06, 2007 requested that Respondent make certain changes to the packaging, including noting that the franks were “packed for” Packers.

13. As part of the discussions relating to packaging for the Packers SHORGOOD Franks, Respondent's representatives acknowledged that the labels were Packers labels and agreed to the packaging changes which clearly and plainly identified Packers as the source of the "Packers SHORGOOD Franks".

14. The packaging for the Packers SHORGOOD Franks included the SHORGOOD Design.

15. Moreover, and as an additional step to make public its ownership of the mark, on February 6, 2008, Packers submitted an application to the Puerto Rico Department of State with presentation number 63668, Trademark Registry (the "Puerto Rico Trademark Registry") for the registration of the SHORGOOD Design for frankfurters (the "Packers Application").

16. Until recently, Respondent continued to supply Packers with the chicken franks merchandised by Packers under the "Packers SHORGOOD Franks" brand without making any claims regarding the ownership of such mark.

17. Nevertheless, and as Packers later found out, on February 2009, Respondent filed federal US Trademark Application Nos. 77668561 and 77668559 for the SHORGOOD word mark and design, in a form identical or substantially similar to the SHORGOOD Design, in class 29, on an intent to use basis.

18. In the meantime, Packers continued buying packaged goods from Respondent bearing Packers' SHORGOOD mark.

19. As part of its attempts to bolster its ownership claims, and without consultation with Plaintiffs, Respondent unilaterally changed the packaging of the SHORGOOD brand chicken franks at some unknown date.

20. On April 11, 2011, Respondent contacted Petitioners to formally assert its purported rights over the SHORGOOD brand, at which time Petitioners become aware that the last inventory of its SHORGOOD branded products purchased from Respondent had been labeled to misleadingly identify Respondent as the source of such goods.

21. After numerous requests for extensions based upon Respondents's purported continued "bona fide intention to use" the mark, Respondent was finally able to submit its statement of use just recently, on April 12, 2011, accompanied by the illicit specimen of the Packer's SHORGOOD Franks which now misleadingly identified Respondent as the source of the goods.

22. In furtherance of its attempts to misappropriate the brand, on May 24, 2011, Respondent filed a Complaint before the U.S. District Court, Eastern District of Virginia, Civil No. 2:11 CV94 (RAJ/FBS) against Packers and V. Suárez for declaratory judgment, unfair competition, false designation of origin and trade dress infringement under the Lanham Act, 15 U.S.C. §§ 1051 et. seq.<sup>1</sup>

23. On April 15, 2011, the Puerto Rico Trademark Registry approved the Packers application for publication, which step was fully accomplished and the time frame for the filing of any opposition passed. Thus, the only item pending is the formal issuance of the Trademark Certificate under Puerto Rico's Trademark Act (the "Packers Registration").

24. On June 15, 2011, Packers sold, assigned and transferred to V. Suárez the entire right, title and interest in and to the SHORGOOD Design and the Packers Registration, together with the goodwill of the business in connection with which the SHORGOOD Design trademark is used.

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<sup>1</sup> Petitioners have not been served in that Civil Action. If and when served, Petitioners will move to dismiss such claim, without prejudice, for improper venue as allowed under Rule 12(b)(3) of the Federal Rules of Civil Procedure.

25. On June 17, 2011, United States Trademark Registration Number 3,978,570 for the word mark SHORGOOD for use in association with hot dogs and hot dogs made primarily from poultry and Registration Number 3,978,571 for a design mark incorporating the SHORGOOD word mark for use in association with hot dogs and hot dogs made primarily from poultry were issued in the name of Respondent. Printed information from the TARR and Assignment electronic databases of the USPTO showing the current status and title of these Registrations are attached as Exhibit A.

26. Registration Numbers 3,978,570 and 3,978,571 claim first use of the mark in October 2006.

27. Neither of Petitioners has ever assigned the SHORGOOD mark, the SHORGOOD Design or any other similar mark to Respondent, nor authorized Respondent to register the SHORGOOD mark, the SHORGOOD Design, or any other similar mark with the United States Patent and Trademark Office.

28. Beginning in or about 2005, Respondent manufactured products for, and at the instruction of, Packers, and later V. Suárez, at their direction and according to their specifications and any use by Respondent inured to the benefit of Petitioners.

29. Petitioners believe and allege that the mark SHORGOOD and any related marks belonged to Packers and now, by virtue of an assignment from Packers to V. Suárez, belong to V. Suarez.

30. Petitioners believe and allege that Respondent is not the owner of, and at no point during the application was the owner of, the mark SHORGOOD, the SHORGOOD Design or any other related marks.



31. Respondent's use and registration of the SHORGOOD mark and the SHORGOOD & design mark enable Respondent to trade upon and utilize the goodwill associated with Petitioners' mark and products.

32. Petitioners believe and allege that the SHORGOOD mark, the SHORGOOD Design and any other similar marks, when applied to goods that do not originate with Petitioners, are likely to cause confusion or mistake or to deceive and will deceive and mislead the purchasing public into believing that those goods are also licensed or controlled by Petitioners, or that Respondent is an affiliate of, or in some way related to Petitioners.

33. Petitioners, individually and collectively, believe that they are, and each of them is, being, and will continue to be, damaged by the continued registration of Registration Numbers 3,978,570 and 3,978,571.

34. Petitioners allege that Registration Numbers 3,978,570 and 3,978,571 are void ab initio under Trademark Act Section 1 because they were not filed by the owner of the marks.

35. Petitioners allege that the applications which matured into the registration are void ab initio due to fraud committed during the prosecution of the applications.

WHEREFORE, Petitioners believe and aver that they are being and will continue to be damaged by the continuing registration of the SHORGOOD mark and the SHORGOOD & design mark by Respondent as aforesaid, and requests that this Petition for Cancellation be granted and that Registration Numbers 3,978,570 and 3,978,571 be cancelled.

Petitioners have appointed CARLA GARCIA, a member of the law firm of O'NEILL & BORGES and a member of the Bar of the Commonwealth of Puerto Rico, to prosecute this

cancellation proceeding and to transact all business in and before the United States Patent and Trademark Office in connection herewith.

Please address all correspondence to:

CARLA GARCIA  
O'Neill & Borges  
250 Munoz Rivera Ave, Suite 800  
San Juan, Puerto Rico 00918

Payment has been made by credit card through the ESTTA system concurrently with the filing of this Petition.

Respectfully submitted,

PACKERS PROVISION CO. OF PUERTO  
RICO, INC. and V. SUÁREZ & CO.

BY:           /CARLA GARCIA/            
CARLA GARCIA  
O'NEILL & BORGES  
250 Munoz Rivera Ave.  
San Juan, Puerto Rico 00918  
(787) 282-5737  
Fax (787) 753-8944  
Email: [tmproceedings@oneillborges.com](mailto:tmproceedings@oneillborges.com)  
Attorneys for Petitioners

Dated: July 22, 2011

## CERTIFICATE OF SERVICE

I, Travis D. Wheatley, state that I served a copy of the foregoing Petition for Cancellation, via UPS Overnight Delivery, Tracking No. 1Z 725 102 01 5016 6333, postage prepaid, upon Respondent at the following address:

THE SMITHFIELD PACKING COMPANY, INCORPORATED  
111 COMMERCE STREET  
SMITHFIELD, VA 23430

and, via USPS Express Mail Post Office to Addressee, postage prepaid, upon its attorney of record at the following address:

CARL H. PIERCE  
REED SMITH LLP  
PO BOX 7990  
PHILADELPHIA, PA 19101-7990

in accordance with Trademark Rule § 2.119 and TBMP §309.02(c)(2) on this 22<sup>nd</sup> day of July 2011.

/Travis D. Wheatley/

Travis D. Wheatley

## **EXHIBIT A**

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2011-07-22 13:13:34 ET**

**Serial Number:** 77668561 [Assignment Information](#) [Trademark Document Retrieval](#)

**Registration Number:** 3978571

**Mark**



**(words only):** SHORGOOD

**Standard Character claim:** No

**Current Status:** Registered. The registration date is used to determine when post-registration maintenance documents are due.

**Date of Status:** 2011-06-14

**Filing Date:** 2009-02-11

**Transformed into a National Application:** No

**Registration Date:** 2011-06-14

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 110

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)**

**Current Location:** 650 -Publication And Issue Section

**Date In Location:** 2011-05-11

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

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1. The Smithfield Packing Company, Incorporated

**Address:**

The Smithfield Packing Company, Incorporated  
111 Commerce Street  
Smithfield, VA 23430  
United States

**Legal Entity Type:** Corporation**State or Country of Incorporation:** Delaware

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**GOODS AND/OR SERVICES**

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**International Class:** 029**Class Status:** Active

hot dogs; hot dogs made primarily from poultry

**Basis:** 1(a)**First Use Date:** 2006-10-00**First Use in Commerce Date:** 2006-10-00

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**ADDITIONAL INFORMATION**

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**Color(s) Claimed:** The color(s) red, orange, white is/are claimed as a feature of the mark.**Description of Mark:** The mark consists of a depiction of a white and red bird within an orange circle. Beneath the bird is the word "SHORGOOD" in red, block print.**Design Search Code(s):****03.15.03** - Chickens, hens, roosters; Chicks; Hens; Rooster**03.15.24** - Stylized birds and bats**03.17.16** - Heads of birds**26.01.03** - Circles, incomplete (more than semi-circles); Incomplete circles (more than semi-circles)**26.01.21** - Circles that are totally or partially shaded.**26.17.01** - Bands, straight; Bars, straight; Lines, straight; Straight line(s), band(s) or bar(s)**26.17.05** - Bands, horizontal; Bars, horizontal; Horizontal line(s), band(s) or bar(s); Lines, horizontal

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE:** To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2011-07-18 - Notice Of Suit

2011-07-13 - Assignment Of Ownership Not Updated Automatically

2011-06-14 - Registered - Principal Register

2011-05-12 - Notice Of Acceptance Of Statement Of Use Mailed  
2011-05-11 - Law Office Registration Review Completed  
2011-05-10 - Allowed for Registration - Principal Register (SOU accepted)  
2011-04-13 - Statement Of Use Processing Complete  
2011-04-12 - Use Amendment Filed  
2011-04-12 - TEAS Statement of Use Received  
2011-03-04 - Notice Of Approval Of Extension Request Mailed  
2011-03-03 - Extension 3 granted  
2011-02-28 - Extension 3 filed  
2011-02-28 - TEAS Extension Received  
2010-09-28 - Notice Of Approval Of Extension Request Mailed  
2010-09-27 - Extension 2 granted  
2010-09-01 - Extension 2 filed  
2010-09-27 - Case Assigned To Intent To Use Paralegal  
2010-09-01 - TEAS Extension Received  
2010-02-26 - Extension 1 granted  
2010-02-26 - Extension 1 filed  
2010-02-26 - TEAS Extension Received  
2009-09-01 - NOA Mailed - SOU Required From Applicant  
2009-06-09 - Published for opposition  
2009-05-20 - Notice of publication  
2009-05-01 - Law Office Publication Review Completed  
2009-05-01 - Assigned To LIE  
2009-05-01 - Approved For Pub - Principal Register  
2009-04-30 - Assigned To Examiner



2009-02-18 - Notice Of Design Search Code And Pseudo Mark Mailed

2009-02-17 - New Application Office Supplied Data Entered In Tram

2009-02-14 - New Application Entered In Tram

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**

Carl H. Pierce

**Correspondent**

CARL H. PIERCE

REED SMITH LLP

PO BOX 7990

PHILADELPHIA, PA 19101-7990

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## Trademark Assignment Abstract of Title

## Total Assignments: 2

Serial #: 77668561

Filing Dt: 02/11/2009

Reg #: 3978571

Reg. Dt: 06/14/2011

Registrant: The Smithfield Packing Company, Incorpor

Mark: SHORGOOD

## Assignment: 1

Reel/Frame: 4061/0504

Received: 09/15/2009

Recorded: 09/15/2009

Pages: 8

Conveyance: SECURITY INTEREST

Assignor: THE SMITHFIELD PACKING COMPANY, INCORPORATED

Exec Dt: 07/02/2009

Entity Type: CORPORATION

Citizenship: DELAWARE

Assignee: JPMORGAN CHASE BANK, N.A., AS ADMINISTRATIVE AGENT

Entity Type: NATIONAL ASSOCIATION

Citizenship: UNITED STATES

P.O. BOX 2558

HOUSTON, TEXAS 77252

Correspondent: VALERIE BRENNAN, HOGAN &amp; HARTSON L.L.P.

7930 JONES BRANCH DRIVE

BOX INTELLECTUAL PROPERTY

MCLEAN, VA 22102

## Assignment: 2

Reel/Frame: 4576/0688

Received: 07/07/2011

Recorded: 07/07/2011

Pages: 51

Conveyance: TRADEMARK SECURITY AGREEMENT

Assignor: JPMORGAN CHASE BANK, N.A.

Exec Dt: 06/08/2011

Entity Type: NATIONAL ASSOCIATION

Citizenship: TEXAS

Assignee: COOPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK B.A.,  
"RABOBANK NEDERLAND"

Entity Type: BANKING ASSOCIATION

Citizenship: NEW YORK

245 PARK AVENUE

36TH FLOOR

NEW YORK, NEW YORK 10167

Correspondent: JANET W. CHO - HUNTON &amp; WILLIAMS LLP

951 EAST BYRD STREET

RIVERFRONT PLAZA - WEST TOWER

RICHMOND, VA 23219-7074

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**Serial Number:** 77668559 Assignment Information Trademark Document Retrieval

**Registration Number:** 3978570

**Mark**

**SHORGOOD**

**(words only):** SHORGOOD

**Standard Character claim:** Yes

**Current Status:** Registered. The registration date is used to determine when post-registration maintenance documents are due.

**Date of Status:** 2011-06-14

**Filing Date:** 2009-02-11

**Transformed into a National Application:** No

**Registration Date:** 2011-06-14

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 110

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov**

**Current Location:** 650 -Publication And Issue Section

**Date In Location:** 2011-05-11

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**ADDITIONAL INFORMATION**

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(NOT AVAILABLE)

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Reg. Dt: 06/14/2011

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Citizenship: UNITED STATES

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RIVERFRONT PLAZA - WEST TOWER

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Web interface last modified: Apr 30, 2009 v.2.1

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